

AMENDATORY SECTION (Amending WSR 99-08-073, effective 5/6/99)

WAC 192-110-015 Applications by ((~~partially unemployed or~~))standby workers—RCW ((~~50.04.310,~~))50.20.010((~~,~~)) and 50.20.130. (1) ((~~Definitions:~~

- ~~—(a) "Employer" means any person or business for which you work in exchange for wages.~~
- ~~—(b) "Partially unemployed" means that during a week:~~
 - ~~—(i) You worked for your regular employer less than full time because of lack of work; and~~
 - ~~—(ii) You earned less than one and one-third times your weekly benefit amount plus five dollars.~~
- ~~—(e))~~ "Standby" means you are temporarily unemployed due to lack of work but expect to return to work with your regular employer.

(2) ((~~Your rights when you are partially unemployed:~~

- ~~—(a) You may file your application or claim for benefits as many as five weeks after your hours are reduced without it being considered late.~~
- ~~—(b) You do not have to register for work, however, you must accept all hours offered by your regular employer.~~

~~(3-))~~ **Your rights when you are on standby:**

- (a) You can ask to be on standby for up to four weeks.
- (b) You do not have to register for work.
- (c) We will ask your employer to verify that you are on standby and your expected return to work date:
 - (i) If your employer does not respond, you can be on standby for up to four weeks;
 - (ii) If your employer confirms you are on standby, you can be on standby for up to four weeks or until the return to work date given by your employer, whichever is earlier;
 - (iii) If your employer responds that you are not on standby, you will be required to immediately register for work and to look for work.
- (d) Your regular employer ((~~must~~)) may request to extend your standby status for more than four, but no more than eight, weeks in any benefit year. This request is subject to approval by the department. We will consider the following before deciding whether to extend standby status for more than four weeks:
 - (i) How long you have been out of work;
 - (ii) Whether other suitable work is available;
 - (iii) The impact on you and your employer if you accept other work; and
 - (iv) Other factors that apply to your situation.

NEW SECTION

WAC 192-110-017 Applications by partially unemployed workers—RCW 50.04.310. If you are partially unemployed as defined in WAC 192-180-013, you may file your application for benefits as many as five weeks after your hours are reduced without it being considered late.

NEW SECTION

WAC 192-170-060 Availability requirements for part-time eligible workers—RCW 50.20.119. (1) If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job that is for 18 or more hours per week.

(2) You must be available for work during the hours that are customary to your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must be available for work all days of the week that are customary for your occupation, even if you have not worked those days in the past. If you are unavailable for work on any day that is a customary day of work for your occupation, your benefits will be reduced as provided in RCW 50.20.130. For example, your occupation customarily works Monday through Friday, although you normally have worked weekends only. If you are unavailable for work Monday through Friday, your benefits will be reduced as provided in RCW 50.20.130.

NEW SECTION

WAC 192-180-013 Job search requirements for individuals working less than full-time. (1) “**Partially unemployed**” workers are those individuals:

- (a) Who were hired to work full time,
- (b) Whose weekly hours of work have been temporarily reduced to less than full time by their employer,
- (c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week, and
- (d) Who are expected to return to full time work for their employer within six months.

These workers are considered to be employer attached and are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) “**Part time**” workers are individuals who normally work less than full time, or who accept work that is less than full time. To be eligible for benefits, these workers must be available for and actively seeking full time work, and their job search is subject to review. If they obtain part time work, they must continue to seek full time work or benefits will be denied as provided in RCW 50.20.010(1)(c). This definition of “part time” workers addresses individuals who work part time, but do not meet the requirements of RCW 50.20.119.

(3) “**Part time eligible**” workers are individuals who have worked no more than 17 hours in any week of their base year and are eligible for benefits under RCW 50.20.119. These individuals may seek work for 17 or fewer hours per week and their job search is subject to review. If they obtain work of 17 or fewer hours per week, they are considered to be employer attached and are no longer required to look for work, nor are they subject to the job search monitoring program.

AMENDATORY SECTION (Amending WSR 04-23-058, effective 12/16/04)

WAC 192-300-050 Predecessor-successor relationship defined. This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

- (a) All, or a portion, of your operating assets as defined in subsection (3) below; or
- (b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

- (a) A portion of a predecessor employer's operating assets, or
- (b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the properties you use in the normal course of business operations to generate your operating income. They may include properties that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill.

~~((Employees are not operating assets.))~~

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (6) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that occurred as a result of the business acquisition or reorganization, beginning when the acquisition started and ending when the primary entity is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

AMENDATORY SECTION (Amending WSR 04-23-058, effective 12/16/04)

WAC 192-310-030 Reports and tax payments subject to penalty. (1) **Late tax reports.** An employer who files a tax report as described in WAC 192-310-010(2)(a) but does not file it within the time frame prescribed in WAC 192-310-010(2)(c) is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the department.

(2) **Incomplete Tax Reports.** An employer is required to file the report required by WAC 192-310-010 in a complete manner and in the format required by the commissioner.

(a) An "incomplete report" is defined as any report submitted by either a contributory or reimbursable employer or their agent where:

- (i) The entire wage report is not submitted timely; or
- (ii) A required element is not reported (social security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported such as, but not limited to, missing social security numbers, names, hours, wages; or
- (v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report-; or

(vi) The report includes duplicate social security numbers, or impossible social security numbers as indicated by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not submitted in the format required by the commissioner under WAC 192-310-010(c).

(c) For purposes of this section, the term "significant" means an employer who has:

(i) Two to 19 employees and reports incomplete wage records for two or more employees; or

(ii) Twenty to 49 employees and reports incomplete wage records for three or more employees; or

(iii) Fifty or more employees and reports incomplete wage records for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who fails to file a report required by RCW 50.12.070 is subject to penalty as follows:

(a) ~~((**Incomplete tax report.** The penalty for filing an incomplete tax report will be t))~~Two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less((-)), with a minimum penalty of \$75.00.

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply:

(i)	1st Occurrence	\$ 75.00
(ii)	2nd Occurrence	\$150.00
(iii)	3rd and subsequent occurrences	\$250.00

~~((**(b) Filing tax report in an incorrect format.** The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:~~

(i)	1st Occurrence	\$150.00
(ii)	2nd and subsequent occurrences))	\$250.00

(4) **Knowingly misrepresenting amount of payroll.** If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference

between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

(5) **Report of employee's wages.** Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.

(6) **Delinquent tax payments.** For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.

(7) **Penalty waivers.** The department may, for good cause, waive penalties in the following situations:

- (a) The return was filed on time but inadvertently mailed to another agency;
- (b) The delinquency was due to an action of an employee of the department, such as providing incorrect information to the employer when the source can be identified, or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time;
- (c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;
- (d) The delinquency was caused by the accidental destruction of the employer's place of business or business records; ((✕))
- (e) The department finds the employer to be out of compliance during an employer-requested audit, but the department determines the employer made a good faith effort to comply with all applicable laws and rules((-));

(f) The report was in an incorrect format and the employer can demonstrate making a good faith attempt to correct the problem in a timely manner after the department provided notification of the problem; or

(g) The employer can demonstrate that an impossible social security number was provided to the employer by the employee.

(8) **Waiver requests.** A request for a waiver of penalties must be written, contain all pertinent facts, be accompanied by available proof, and be filed through a tax office. In all cases the burden of proving the facts is on the employer.

(9) **Extensions.** The department, for good cause, may extend the due date for filing a report. The employer must make a deposit with the department in an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and applied to the employer's debt. The amount of the deposit is subject to approval by the department.

(10) **Billing statements.** The department will not mail billing statements to employers who owe amounts of less than \$5.00. Amounts due will be accrued until they total \$5.00 at which time a billing statement will be mailed to the employer.

NEW SECTION

WAC 192-320-005 Experience defined—RCW 50.29.021. As used in this chapter, the term “experience” includes factors that bear a direct relation to the risk of unemployment. Any benefits paid which are based on wages paid by the employer and chargeable under RCW 50.29.020 are considered experience.

NEW SECTION

WAC 192-320-010 Experience transferred to successor employer—Definition. (1) Any benefits paid which are based on wages paid by the predecessor employer prior to the transfer of ownership must be charged to the successor employer. Just as the successor employer acquires the organization, trade, business, assets, and experience of a predecessor employer as of the date of transfer, it must also acquire the benefit charges for past, current, or future claims related to the predecessor employer (or segregable part of the predecessor employer) prior to the transfer.

(2) Once experience has been transferred, it becomes the successor employer’s experience. It must be used in determining the successor’s rates for any rate year that follows the year in which the transfer occurs. (There is an exception when, following the transfer, the successor still does not have sufficient experience to meet the definition of a qualified employer in RCW 50.29.010(6).) Since the transferred experience belongs to the successor employer, it may no longer be used to compute rates for the predecessor employer for subsequent rate years.

NEW SECTION

WAC 192-320-020 Calculation of industry average—RCW 50.29.025. (1) As used in this title, the term “NAICS” is an abbreviation for North American Industrial Classification System.

(2) When calculating the industry average array factor rate and the industry average graduated social cost factor rate, the department will use the first four digits of the NAICS code to determine the industry that is being calculated.

(3) **Industry average array factor rate.** (a) The department will calculate the industry average array factor rate as follows:

- (i) A matrix will be prepared that contains each of the 40 rate classes;
- (ii) For each rate class, all qualified employers assigned to that rate class and assigned the NAICS code being calculated will have their taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date, and reported to the department by the deadline, totaled and displayed;
- (iii) The total of the 40 products will be divided by the total of all payrolls used in the calculation; and

(iv) The result will be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average array factor rate shall be no less than 1.00 percent or greater than 5.4 percent.

(4) **Industry average graduated social cost factor rate.** (a) The department will calculate the industry average graduated social cost factor rate as follows:

(i) The industry average matrix will be expanded to display the graduated social cost factor rate for each of the 40 rate classes;

(ii) The payroll sum in each rate class will be multiplied by the corresponding graduated social cost factor rate for that rate class and the product displayed;

(iii) The total of the 40 products shall be divided by the total of all payrolls used in the calculation; and

(iv) The result shall then be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average graduated social cost factor rate shall be no greater than the graduated social cost factor rate assigned rate class 40.

(4) If no qualified employers are in the four digit level of the NAICS code, the rates shall be calculated at the corresponding three digit level and the result assigned to the four digit level. If no qualified employers are in the three digit level, the rates shall be calculated at the corresponding two digit level and the result assigned to both the three and four digit levels.